

No. 35083-5-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

RANDALL G. BRYANT,

Defendant/Appellant.

Appellant's Brief (Amended)

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TABLE OF CONTENTS

A.	ASSIGNMENT OF ERROR.....	4
B.	ISSUE PERTAINING TO ASSIGNMENTS OF ERROR.....	4
C.	STATEMENT OF THE CASE.....	4
D.	ARGUMENT.....	5
	Mr. Bryant’s right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment was violated where the State failed to prove the essential elements of the charged crime.....	5
E.	CONCLUSION.....	9

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).....	6
<i>State v. Baeza</i> , 100 Wn.2d 487, 670 P.2d 646 (1983).....	6, 7
<i>State v. Collins</i> , 2 Wn. App. 757, 470 P.2d 227, 228 (1970).....	6
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	7
<i>State v. Moore</i> , 7 Wn. App. 1, 499 P.2d 16 (1972).....	6
<i>State v. Myers</i> , 133 Wn.2d 26, 941 P.2d 1102 (1997).....	7

<i>State v. Partin</i> , 88 Wn.2d 899, 567 P.2d 1136 (1977).....	7
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992).....	6, 7
<i>State v. Taplin</i> , 9 Wn. App. 545, 513 P.2d 549 (1973).....	6
<i>State v. Theroff</i> , 25 Wn. App. 590, 608 P.2d 1254, affd, 95 Wn.2d 385, 622 P.2d 1240 (1980).....	7
<i>State v. Zamora</i> , 63 Wn. App. 220, 817 P.2d 880 (1991).....	7

Constitutional Provisions and Statutes

U.S. Const. amend. XIV.....	5
Washington Constituion, Article 1, § 3.....	5

A. ASSIGNMENT OF ERROR

The evidence was insufficient to sustain the conviction for possession of a stolen motor vehicle.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Was Mr. Bryant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment violated where the State failed to prove the essential elements of the charged crime?

C. STATEMENT OF THE CASE

Blaan McMahon's 1991 Acura was stolen sometime in November, 2016, by persons unknown. RP 76. About one week later, Mr. Bryant was stopped while driving the Acura because the license plate was for a different vehicle. RP 90-91. The ignition key was made from a house key blank not from an automobile blank. RP 99-103. It was unknown when the key was made or by whom. RP 109. There was no damage to the car or the ignition. RP 107-06. The license plate was not dusted for fingerprints or checked for DNA. RP 108.

Mr. Bryant did not testify. RP 118. He was convicted by a jury of possession of a stolen motor vehicle. CP 24. The jury was instructed in pertinent part:

To convict the defendant of the crime of possessing a stolen motor vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt: (1) that on or about November 24, 2016, the defendant knowingly possessed a stolen motor vehicle; (2) that the defendant acted with knowledge that the motor vehicle had been stolen; (3) that the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto; and (4) that any of these acts occurred in the state of Washington.

A person knows or acts knowingly or with knowledge with respect to a fact when he or she is aware of that fact. It's not necessary that the person know that the fact is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted, but not required, to find that he or she acted with knowledge of that fact. When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

CP 17-18

This appeal followed. CP 76-77.

D. ARGUMENT

1. Mr. Bryant's right to due process under Washington

Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment was violated where the State failed to prove the essential elements of the charged crime.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment the state must prove every element of a crime

charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[T]he use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn. App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* “Substantial evidence” in the context of a criminal case, means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn. App. 757, 759, 470 P.2d 227, 228 (1970)).

In determining the sufficiency of the evidence, the test is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State*

v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068 (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068 (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

While circumstantial evidence is no less reliable than direct evidence, *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. *Baeza*, 100 Wn.2d at 491, 670 P.2d 646. Specific criminal intent may be inferred from circumstances as a matter of logical probability." *State v. Zamora*, 63 Wn. App. 220, 223, 817 P.2d 880 (1991).

Here, the jury was instructed to convict the defendant of the crime of possessing a stolen motor vehicle, the State had to prove (1) that on or about November 24, 2016, the defendant *knowingly* possessed a stolen

motor vehicle; (2) that the defendant acted *with knowledge* that the motor vehicle had been stolen; and (3) that the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto. CP 17 (emphasis added).

The evidence was insufficient to prove these three elements because there was no evidence the defendant knew the vehicle was stolen even under the broad definition of “knowingly” given to the jury. There was no evidence Mr. Bryant stole the vehicle or was associated with the person or persons who did steal the vehicle. The fact that the license plate was for a different vehicle is inconsequential because there was no evidence Mr. Bryant switched the plates or knew they had been switched. Similarly, there was no evidence Mr. Bryant knew the ignition key was made from a house key blank instead of an automobile blank and it was unknown when the key was made or by whom. RP 109.

Therefore, since there was no evidence the defendant *knowingly* possessed a stolen motor vehicle, acted *with knowledge* that the motor vehicle had been stolen, or withheld or appropriated the motor vehicle to the use of someone other than the true owner, the State failed to prove the essential elements of the charged crime.

E. CONCLUSION

For the reasons stated, the conviction should be reversed. Pursuant to RAP 15.2(f), Appellant's indigent status should continue throughout this appeal and he should not be assessed appellate costs if the State were to substantially prevail. See CP 82-83. Appellate counsel anticipates filing a report as to Appellant's continued indigency no later than 60 days following the filing of this brief.

Respectfully submitted October 21, 2017,

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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on October 21, 2017, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of the amended brief of appellant:

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